

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LAMONT DARRELL ROBINSON,

Petitioner,

v.

CASE NO. 2:14-CV-10029
HONORABLE AVERN COHN

KENNETH MCKEE,

Respondent.

_____ /

**ORDER DISMISSING PETITION,
DENYING A CERTIFICATE OF APPEALABILITY, AND
DENYING LEAVE TO PROCEED IN FORMA PAUPERIS ON APPEAL**

I.

This is a habeas case under 28 U.S.C. § 2254. Michigan prisoner Lamont Darrell Robinson (“Petitioner”) challenges his felony murder and felony firearm convictions which were imposed following a jury trial in the Wayne County Circuit Court in 1993. Petitioner was sentenced to consecutive terms of life imprisonment without the possibility of parole and two years imprisonment on those convictions. In his petition, he asserts that the prosecutor knowingly presented false testimony at trial. As will be explained, the petition must be dismissed because Petitioner has a pending habeas case challenging the same conviction.

II.

Petitioner has already filed a habeas action challenging his felony murder and felony firearm convictions with this Court – and that action is currently pending before another judge. See Robinson v. McKee, Case No. 5:13-CV-13145 (E.D. Mich.

O'Meara, J.). Accordingly, this case is duplicative or successive to his pending petition. As such, it must be dismissed. See, e.g., Flowers v. Trombley, 2006 WL 724594, *1 (E.D. Mich. March 17, 2006); Harrington v. Stegall, 2002 WL 373113, *2 (E.D. Mich. Feb. 28, 2002); see also Davis v. United States Parole Comm'n, 870 F.2d 657, 1989 WL 25837, *1 (6th Cir. March 7, 1989) (district court may dismiss a habeas petition as duplicative of a pending habeas petition).

Should Petitioner wish to pursue the claim raised in this case, he should file a motion to supplement or amend the habeas petition in his previously-filed case before Judge O'Meara. Petitioner may not challenge the same convictions in two different habeas actions.

III.

Accordingly, the petition is DISMISSED. This dismissal is without prejudice to the proceedings in Case No. 5:13-CV-13145. This case is CLOSED.

Before Petitioner may appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c)(1)(a); Fed. R. App. P. 22(b). A certificate of appealability may issue only if he "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When a district court denies relief on procedural grounds without addressing the merits, a certificate of appealability should issue if reasonable jurists would find it debatable whether the petitioner states a valid claim of the denial of a constitutional right, and reasonable jurists would find it debatable whether the court was correct in its procedural ruling. Slack v. McDaniel, 529 U.S. 473, 484-85 (2000). Reasonable jurists could not debate the correctness of the Court's procedural ruling. Accordingly, the Court DENIES a certificate of appealability. The Court also DENIES leave to proceed *in forma pauperis* on appeal as an appeal cannot

be take in good faith. See Fed. R. App. P. 24(a).

SO ORDERED.

s/Avern Cohn
UNITED STATES DISTRICT JUDGE

Dated: January 15, 2014

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record on this date, January 15, 2014, by electronic and/or ordinary mail.

s/Carol Bethel for Sakne Chami
Case Manager, (313) 234-5160